



POLICE DEPARTMENT
CITY OF BURLINGTON

Christopher Brickell
Chief of Police
301 Forest Dale Road
Brandon, VT 05733

October 2, 2018

Dear Chief Brickell:

I am writing to you in follow up to a letter I received from Rick Gauthier and also as my representative on the Vermont Criminal Justice Training Council (VCJTC), but copying the other members of the council to ease the ensuing discussion.

From a preliminary investigation, it appears that police recruits, including recruits sponsored by the Burlington Police Department (BPD), have suffered brain injuries during a specific use-of-force training scenario conducted at the Vermont Police Academy (VPA). The VPA and the VCJTC have an opportunity to demonstrate impartiality, transparency, and legitimacy by investigating these incidents in a forthright, self-initiated way. Seizing this opportunity can serve the interests of the recruits entrusted to our care and confirm the public trust given to Vermont's police agencies.

The United States Marine Corps drill instructor creed begins with the words "These recruits are entrusted to my care." As police leaders, we all feel this way; it is something I remind every family member and loved one who comes to our ceremony when recruits are sworn in. I promise everyone in the audience that we will do everything we reasonably can to protect our recruits and officers, and that if they are seriously hurt, there will be an accounting. This promise is what motivated me and Chief Burke to begin our initial investigation. It is also at the heart of why it is incumbent on us to undertake a formal accounting of a pattern of serious injuries sustained by our recruits, but it is not the only reason we need an independent internal investigation.

First, we need an independent internal investigation for the sake of the profession. We are confronted by an alleged pattern of brain injuries stemming from a use-of-force scenario during which recruits were reportedly forcefully punched in the head when they were not looking. When this matter becomes public, it is likely to draw acute attention to Vermont police training and practices. The public may conclude that these injuries were foreseeable and unnecessary, particularly if attorneys' allegations and media reports are unaccompanied by a comprehensive, transparent, internal investigation. The public may conclude that the scenario was a form of hazing. Such conclusions would reduce the perceived legitimacy of all institutions associated with Vermont policing, particularly if a case is made that the scenario had elements of recklessness and negligence. It is likely that members of the public will ask whether police are being trained to use force without regard to the consequences to the individual with whom they are interacting. Should the VPA and VCJTC yet again decline to conduct a self-initiated internal investigation, it may lead people to further conclude the police were, and wish to remain, willfully blind to the problem. Some people may come to wonder whether this training scenario affects the how, why, and validity of when Vermont police officers use force. What message does it send to the public if police officers are permitted, if not encouraged, to injure other police officers without recourse? That message will not be good for the profession.

Second, we need an independent internal investigation to demonstrate our ability to review our own uses of force impartially. Police officers are uniquely authorized to use physical force, and this creates responsibilities when our activities seriously injure someone. Our awareness and acceptance of this responsibility means that whenever any person is seriously injured by police activity, it *always* requires a self-initiated internal investigation as a matter of demonstrating institutional integrity and maintaining the public trust. Why should it be any different when our activities seriously injure a fellow officer? Police recruits—who are in the VPA's care, who are subordinate to their VPA instructors, who are expected to obey and comply with their instructors—must not have less recourse to an internal accountability process than members of the general public, suspects, and prisoners.

An internal investigation would allow the VPA to demonstrate integrity and impartiality in its accountability mechanisms. These would attach not just to this matter, but, by extension, to all matters affected by the five topics below.

- 1) **Training integrity and best practices.** An investigation can prove VPA has noticed and reacted appropriately to the reported pattern of brain injuries. Without it, the public may conclude not only that sucker punching an inattentive officer in the head is unnecessary to produce safe, well-trained officers, but also that VPA believes that this is a valid and appropriate training method, regardless of the harm

caused. I am unaware of any other police academy that trains in this way, and am aware of several that have prohibitions to doing so. A brief analysis of the VPA's practices by the Baltimore Police Department (attached) raised "serious concerns" in this regard. Furthermore, the public is becoming more and more familiar with the brain-injury consequences of forceful blows to the head and expects its police to be aware as well and act appropriately.

2) **Care for our cops.** We need to make sure we are properly taking care of officers who may have unreported or undiagnosed brain injuries. Although it appears that forceful head strikes may have been administered to perhaps dozens of recruits, there appears to have been no concussion-screening protocol put in place by Academy supervision. At least two of the officers affected by the training scenario were hospitalized for what we understand to be brain injuries, and two others say they never reported their injuries for fear of being recycled at the VPA. One of the undiagnosed officers reports [REDACTED] is now afflicted with lifetime hearing and balance problems. The BPD identified these cases through a preliminary investigation, but was unable to interview the dozens of other non-BPD officers who participated in the scenario. The VPA will not know how many other recruits may have suffered brain injuries and not sought help and treatment unless it conducts a thorough internal investigation. Officers with possibly untreated brain injuries are particularly vulnerable on patrol and can create a dangerous situation for themselves and their colleagues. We owe it to our cops to make sure they understand the risks and are treated accordingly.

3) **Transparency before the public.** Public employees have been injured while in the care of the VPA and its instructors. This makes a transparent assessment of the injuries—and accountability for them—necessary and critical. The very purpose of the scenario appears to be to catch an inattentive recruit unaware with a forceful blow to the head and thus to teach the recruit to pay attention. This does not appear to be a scenario in which the blow to the head is an accident or unexpected consequence, but it instead appears to be an intended element of the instruction. If that is so, it seems likely that when this scenario becomes public, many people may conclude that concussive brain injuries are a foreseeable, and unnecessary, consequence of that intentional instruction. We owe it to the public to conduct a thorough, transparent internal investigation that confirms what we know to be true: that the police can police themselves. Absent such an investigation, the public may come to feel that the subsequent repair of this scenario alone is inadequate to demonstrate proper accountability. People will want to know who was in charge, who approved the scenario as administered, what the written curriculum was, what steps were taken to identify recruits with a history of concussions, what steps were

taken to discover and treat concussions after the scenario, when the pattern of injuries was identified, what was done about it, and if the leadership and supervision was adequate. All of this is the rightful subject matter of a good internal investigation.

4) **Impartiality.** A thorough, self-initiated internal investigation can protect against allegations of conflict of interest and lack of impartiality. The Office of the State Attorney General represents the VCJTC as legal counsel, and the role player who is allegedly responsible for some of the injurious strikes to recruits' heads is [REDACTED] for that office. It is important for people to be able to conclude that this potential conflict of interest played no role in a decision about whether to conduct an internal investigation or not. In a reply to my previous recommendations for an investigation, it was conveyed that the VCJTC discussed the matter in executive session with an attorney and decided it would instruct the VPA not to conduct an investigation for confidential reasons. Discussions in executive session that remain beyond public inspection do not dispel conflict-of-interest concerns. This is why the BPD not only recommended a transparent internal investigation, but also an independent internal investigator.

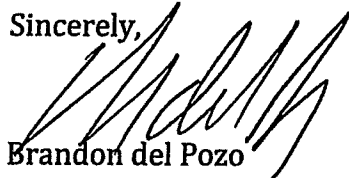
5) **Use-of-force accountability.** One of the formative presumptions about police accountability is the fact that police agencies take all concerns about unnecessary force seriously and investigate them thoroughly, no matter who makes them and why. The concerns in this case were raised by two chiefs of police with over forty years of experience in the profession in a very wide range of assignments. We presently command the first and second largest municipal police departments in the state. We feel a fact pattern exists that merits not only a training review, but an internal investigation, and we hope you will take our concerns seriously.

There is every reason to think this matter will be the subject of litigation and play out in public view, because the injuries suffered by at least one of the officers were very significant. Accountability through litigation by an injured person, however, does not reassure Vermonters that the government handled the matter properly when it was brought to its attention. Our job as leaders is to get in front of challenges, rather than turning away. Historically, declining to pursue an internal investigation based on any citizen's assertion of circumstances that merit an investigation has proven to have troublesome public outcomes in American policing. It may well be that some of the conclusions of an internal investigation are uncomfortable or unfortunate or may involve imposing discipline, but that is also our job as leaders. It is not one that we should enjoy, but it is one that we should take seriously.

Finally, the BPD has, as other police agencies in this State have, no other option but to send its recruits to the Vermont Police Academy for training. Yet, the Academy's refusal to thoroughly investigate these incidents, after we have reported potentially serious injuries to our employees, has shaken our faith in the Academy. How can we continue to ask the people of Burlington to trust that the Academy is properly training our employees, and how can we ask our employees to put themselves at risk just to receive their basic training? The VPA and the VCJTC have an opportunity to provide to our recruits and the people of Vermont, who have made financial and personal investments in these men and women, a formal explanation as to why actions resulted in a serious injury to an officer in their care. If the investigation demonstrates as much, those actions can be shown to have been lawful, proper, within policy and guidelines, and properly supervised. The VPA also has an opportunity to explain how it exercised due care for recruits during and after the scenario. If an investigation reveals gaps, they can be discussed in a way that assures they have been addressed. Subsequent repair is important, but in policing it has not been adequate for purposes of accountability in and of itself.

Thank you for your time and attention. I am looking forward to the Council's consideration and your response. We trust men and women to the VPA's care, and some have had their lives and careers altered in irrevocable ways. As leaders of the police profession, we owe it to those officers and the people we serve to account for that.

Sincerely,



Brandon del Pozo
Chief of Police

CC: Criminal Justice Training Council
Burlington Police Commission